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*Attorneys for Plaintiff and Counter-defendant
Epic Games, Inc.*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

EPIC GAMES, INC.

Case No. 4:20-CV-05640-YGR-TSH

Plaintiff, Counter-defendant,

**DECLARATION OF GARY A.
BORNSTEIN IN SUPPORT OF EPIC
GAMES, INC.'S NOTICE OF MOTION
AND MOTION TO ENFORCE
INJUNCTION**

APPLE INC

V.

APPLE INC.,

Defendant, Counterclaimant.

Judge: Hon. Yvonne Gonzalez Rogers

1 I, Gary A. Bornstein, declare as follows:

2 1. I am a partner at Cravath, Swaine & Moore LLP, counsel to Epic Games, Inc.
 3 (“Epic”) in the above-captioned actions. I am admitted to appear before this Court *pro hac vice*.

4 2. I submit this declaration in support of Epic’s Motion to Enforce Injunction.

5 3. I have personal, first-hand knowledge of the facts set forth in this Declaration. If
 6 called as a witness, I could and would competently testify to these facts under oath.

7 4. I understand that on May 1, 2025, Epic notified Apple in writing that it would use
 8 the developer account registered to Epic Games Sweden AB to submit a *Fortnite* build for
 9 distribution through the U.S. storefront of the App Store. Attached hereto as **Exhibit A** is a true
 10 and correct copy of correspondence between Epic and Apple dated May 1 to May 4, 2025.

11 5. On May 2, 2025, Mark A. Perry, counsel for Apple, called me about the *Fortnite*
 12 submission. Mr. Perry stated that because of the litigation between Epic and Apple, the
 13 submission had been escalated to his attention. He told me that Apple could not comment on
 14 whether the proposed *Fortnite* build would be accepted because Apple had not yet received it for
 15 review, but that if Epic wanted to submit the build using the Epic Games Sweden AB account,
 16 Epic should go ahead and do so.

17 6. Attached hereto as **Exhibit B** is a true and correct copy of correspondence between
 18 Epic and Apple dated May 13, 2025.¹

19 7. Attached hereto as **Exhibit C** is a true and correct copy of correspondence between
 20 Epic and Apple dated May 14, 2025.

21 8. Attached hereto as **Exhibit D** is a true and correct copy of a letter sent from
 22 counsel for Apple to counsel for Epic dated May 15, 2025.

23 9. Attached hereto as **Exhibit E** is a true and correct copy of the currently operative
 24 version of Apple’s Developer Program License Agreement (“DPLA”).

25 10. Attached hereto as **Exhibit F** is a true and correct copy of a letter sent from
 26 counsel for Apple to counsel for Epic dated March 23, 2022.

27 1 Epic has redacted personal identifying information in the form of email addresses from the
 28 exhibits attached to this declaration.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
2 and correct and that I executed this declaration on May 16, 2025, in Riverside, Connecticut.

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4 /s/ Gary A. Bornstein
5 Gary A. Bornstein
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